DRN-3802866

The complaint

Mr E complained that he was given unsuitable advice to transfer his defined benefit (DB) British Steel Pension Scheme (BSPS), to a self-invested personal pension (SIPP).

True Potential Wealth Management LLP is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "True Potential".

What happened

In March 2016, Mr E's employer announced that it would be examining options to restructure its business, including decoupling the BSPS from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund (PPF), or a new defined benefit scheme (BSPS2). Alternatively, members were informed they could transfer their benefits to a personal pension arrangement.

Mr E was concerned about what the announcement by his employer meant for the security of his preserved benefits in the BSPS. He was unsure what to do, so contacted an independent financial adviser (IFA). It didn't have the necessary regulatory permissions to advise on these types of pensions, so the IFA referred Mr E to True Potential which is responsible for providing the pension advice. Information gathered about his circumstances and objectives were broadly as follows:

- Mr E was 42 years old, married and with two dependent children.
- He lived in a home valued at approximately £145,000, owned jointly with his wife which had an outstanding mortgage of around £131,000. The mortgage had 17 years left to run.
- Mrs E worked in the same sector and had her own pension. Together they had a joint income of around £4000 (net) per month and a disposable income of over £1700 per month, after expenses. They had no other savings or liabilities.
- The cash equivalent transfer value (CETV) of Mr E's BSPS was approximately £97,739 and the normal retirement age (NRA) was 65.
- Mr E said he intended to retire at the age of 65.

True Potential set out its advice in a suitability letter on 13 November 2017. It advised him to transfer out of the BSPS and invest the funds in a SIPP. True Potential said this would allow Mr E to achieve his objectives.

Mr E accepted this advice and so transferred from the BSPS to a SIPP. In 2021 Mr E complained to True Potential about its advice, saying he shouldn't have been advised to transfer out of the BSPS. In response, True Potential said it hadn't done anything wrong and was acting on the financial objectives Mr E had at the time.

Mr E referred his complaint to our Service. One of our investigators looked into the complaint and said it should be upheld. As the complaint couldn't be resolved informally, it's come to me for a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've considered with great care, the final response from True Potential, and in particular, all the points made in a comprehensive document dated 10 March 2022 from True Potential's legal advisers. But whilst I've noted all the points made, I've rightly focussed on what I think to be the relevant aspects and points in this case.

I've also taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). Where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of True Potential's actions here.

- PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*
- PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*
- COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*
- The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability and the provisions in COBS 19 which specifically relate to a DB pension transfer.

I have further considered that the regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, True Potential should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr E's best interests.

I've used all the information we have to consider whether transferring away from the BSPS to a SIPP was in Mr E's best interests.

I don't think it was, so I'm upholding his complaint.

Financial viability

True Potential referred in its transfer analysis to 'critical yield' rates. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity income as the DB scheme. I've noted both True Potential's own views about the weight which ought to be applied to the critical yield, and also that this view was broadly repeated in the response from its legal advisers.

However, the critical yield is part of a range of different things which help show how likely it is that a personal pension or SIPP could achieve the necessary investment growth for a transfer-out to become financially viable. So, as well as considering the critical yield, I've looked at other financial comparisons and projections too.

In Mr E's case, True Potential said the critical yield required to match the benefits of the proposed BSPS2 at the age of 65 was 5.85% if he took a full pension and 5.1% if he took tax-free cash and a reduced pension.

Elsewhere in its transfer analysis, True Potential also made mention of the PPF, which it described as a compensation scheme providing a *"safety net"* for pension schemes when the sponsoring employer becomes insolvent. It said the critical yield to match the benefits available through the PPF at age 65 was 5.39% per year if Mr E took a pension under the reduced terms of the PPF and 5.14% per year if he opted to take a tax-free cash element and a further reduced pension.

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017 and was 4.5% per year for 22 years to retirement. I've also kept in mind that the regulator's upper projection rate was 8%, the middle projection rate was 5%, and the lower projection rate was 2%.

True Potential's advice to transfer away from the BSPS to a SIPP was largely based on its view that Mr E could grow his pension outside the DB scheme, in the recommended SIPP, to an extent that made transferring worthwhile. At the time, True Potential assessed Mr E's attitude to risk (ATR) as 'balanced'.

I can see our investigator said that, in his view, Mr E's ATR had been arrived at incorrectly and that his *actual* ATR should have been marked as lower. The significance of this is that in general terms, a lower ATR could constrain the ability of funds within a SIPP to grow; this would likely mean that if Mr E's ATR was indeed lower, then his transferred funds would probably grow at lower rates in the years ahead. Our investigator provided examples of why he thought this. These included Mr E's complete inexperience of these types of money market investments and an apparent nervousness of stock market losses in general.

True Potential therefore needed to consider these issues together with the loss of guarantees and benefits transferring to a SIPP would incur. When assessing his ATR and capacity for loss Mr E completed a questionnaire. True Potential has pointed to various questions on the ATR form about general investment risk which Mr E completed. However, I've noted that Mr E said he wanted a *"significant portion of his funds invested in cautious"* assets. And at the end of the form it had been handwritten that, *"I want 'safe' investments*".

So, with all the information about Mr E's lack of experience in these types of investments, and what he wanted in terms of relative safety moving forward, I am therefore in agreement with the view of our investigator about Mr E's ATR being categorised too highly. Mr E was unlikely to be able to improve on his DB scheme pension.

In my view there would be little point in Mr E giving up the guarantees and benefits available to him through this scheme only to achieve a lower level of benefits in a SIPP. But here, the discount rate was materially below the critical yield figure of 5.85%. The regulator's 'low' projection figure (2%) which I think is much more applicable to Mr E's ATR, was also significantly below that rate. Even the regulator's mid-rate of 5% was still below all the critical yield figures I've set out above. So, there was simply no reliable evidence from True Potential here that Mr E's transferred funds could confidently exceed these projected growth rates to an extent that supported the advice to transfer away from a DB scheme, particularly when taking into account the impact of the charges and fees. Even small differences in projected growth rates can have a substantial effect over time, so I think these figures show Mr E would most likely receive lower pension benefits in the longer-term by transferring to a SIPP. And that would be the case even if Mr E moved with the existing scheme to the PPF.

True Potential said it's SIPP portfolio offered *"a suite of fully-diversified, discretionary managed investment solutions. With wide exposure to world-class investment managers, as well as diversifying your investment by asset class and geographic region, you'll benefit from having more potential to grow your money and manage volatility, all in one portfolio"*. But it only attempted to demonstrate why it thought Mr E's pension funds could grow more in the SIPP to exceed the benefits of him remaining in the DB scheme, on the basis of past performance. And past performance is no guarantee for future performance.

In reality, the figures I've referred to above show there was no realistic chance of the SIPP growth exceeding the critical yield rates. And I've further considered that the initial fees, the annual platform and fund management charges related to the SIPP also added significant costs to the proposed recommendation. In my view, these would have eroded further, any credible chance that the SIPP was a suitable recommendation for Mr E on financial viability grounds.

In addition to this, I've also noted that True Potential said that in order to purchase an annuity to provide all the benefits of equal value to the existing scheme at retirement at age 65, the funds required would be around £262,000 if taking a full pension and £223,000 if taking a pension and lump sum. Even the lower of these figures is over twice the CETV and, in my view, this provides a window into the real value of what Mr E was being advised to give up.

Both True Potential and its advisers have argued that too much weight ought not to be applied to certain components of this complaint and the final decision about it. But here, I've applied a number of different observations, and in my view, they all provide a powerful indication of the real value Mr E would lose if he transferred out of a DB scheme to the SIPP recommended to him. From a financial comparison perspective, transferring to a SIPP meant Mr E would likely receive lower pension benefits in the longer term, when compared against the BSPS2.

I note True Potential's comments about the critical yield being largely irrelevant because he wouldn't have bought an annuity. But I don't think this is either correct or relevant. All the critical yield figures above provide good comparisons about the financial viability of transferring out. I've also considered them alongside a wide range of other projections which all show the same thing – this transfer wasn't in his best interests. In any event, with 22 years left to retirement, I don't think True Potential could make realistic judgements about what Mr E might do in retirement; it was simply too far off.

Of course, True Potential's recommendation was evidently supported by other reasons to transfer away. So I've thought about all the other considerations which might have meant a transfer was suitable for him, despite providing the overall lower benefits mentioned above. I've considered these below.

Flexibility and income needs

In its suitability letter True Potential recommended a transfer to a SIPP based on what it said were Mr E's objectives. I noted the following themes were listed:

- A higher tax-free lump sum would be beneficial.
- A SIPP would provide varying levels of income at different stages of retirement.
- To enable sufficient death benefits to his spouse (he could retain the value of the accrued fund as a legacy to be inherited on death).

So, it seems the supporting reasons that True Potential recommended the transfer was for the flexibility and control it offered to Mr E. I have therefore considered all these issues.

In its suitability letter, True Potential referred to Mr E being able to access more tax-free cash via a SIPP, rather than a DB pension. It's usually the case that more tax-free cash can be accessed from a SIPP when compared against a DB scheme; this is because the values and benefits of the two schemes are calculated differently. But True Potential should have been telling Mr E at the time that extra tax-free lump sums being removed from a SIPP, potentially from the age of 55, also came with consequences in that the amount left for his later retirement years would obviously decrease.

So, whilst I accept the notion of accessing more tax-free cash might have been appealing, this needed to be considered against the other options Mr E faced, including opting for the BSPS2.

Overall, I can't see that Mr E required flexibility in retirement in the way True Potential implied. True Potential said in its transfer analysis that Mr E's estimated annual pension upon his NRA was £7,160 or £4,947 if he took a tax-free lump sum of £32,981. As a DB pension this was guaranteed and index linked and I think it fitted Mr E's needs. There were also limited degrees of flexibility still available to Mr E around retiring early had he opted for the BSPS2, although he'd made it clear his anticipated retirement was 65 which was the same as the NRA for the BSPS2.

I haven't seen anything to persuade me that Mr E wouldn't have been able to meet his retirement income needs by accessing his DB pension instead. I can't see that True Potential identified the flexibility Mr E would already enjoy at retirement - he had joined his employer's new defined contribution ('DC') scheme and would have been making contributions to it for over twenty years until he retired. Mr E could have accessed this as he saw fit when he retired.

I have therefore considered everything True Potential said in its suitability letter about flexibility: it said this would include how funds were invested, the level of income he could withdraw from it and a greater ability to flexibly use the tax-free lump sum element. It also implied that Mr E would be able to have complete control over the pension if he transferred out.

However, I've seen nothing which shows Mr E had either the desire or capacity to exercise personal control over his pension.

Mr E was also only 42 years old at the time and unsurprisingly, he had no concrete plans for retirement. As I've said, even if this changed, I've noted that Mr E could have retired early as a member of the BSPS2 or the PPF. I don't think this applied here, but even if it did, in these circumstances there would have been an 'actuarial reduction' caused by early retirement from the scheme. This would have meant Mr E's pension benefits would have been somewhat reduced due to him accessing the pension earlier and for longer. But I've seen no evidence this was discussed with a view to assessing whether it was more in his best interests, rather than him being advised to transfer away completely.

In my view, Mr E's circumstances were much more aligned to him retiring from a DB scheme, such as BSPS2, and drawing a pension. So, I think the suitable option was for him to access his DB pension in the way it was originally intended.

Death benefits

True Potential says that death benefits were discussed at the time and the SIPP would better enable the retention of the value of the funds if Mr E died. It said this could be seen as a legacy to be inherited more flexibly. But I think this was no more than a 'stock' objective with no real relevance to Mr E's situation.

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a SIPP was probably made to look like an attractive feature to Mr E. But whilst I appreciate death benefits are important to consumers, and Mr E might have thought it was a good idea to transfer the BSPS to a SIPP because of this, the priority here was to advise him about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think True Potential explored to what extent Mr E was prepared to accept a lower retirement income in exchange for higher death benefits.

I've noted that at the time Mr E was described on the 'fact-find' as being in poor health. I've clarified this with his representative and established this related to a previous immunity issue which had been diagnosed some years earlier. At the time of the advice, however, the prognosis had already substantially improved and so there was no indication Mr E's health was such that his life expectancy was affected, or that he might anticipate bouts of illness related to this. The condition was disclosed at the time of the advice to be transparent, much in the same way as one might disclose a medical condition during a life insurance application. I've noted that in the suitability letter True Potential issued, it actually said Mr E's health was "good".

So, as I've said, Mr E was still only 42 years old and I can see True Potential did not refer to his health anywhere else during the course of its advice. Mrs E was also only 41 years old.

I also think the likely death benefits attached to the DB scheme were substantially underplayed. True Potential said these weren't fully known to it at the time – which would of course mean that it advised Mr E to transfer away when it had failed to fully understand all the relevant information. However, I've looked at the timescales involved and looked carefully at when emerging details of the new scheme were being released. Members were sent a *Time to Choose* booklet in October 2017 and I think it's reasonable for me to say that BSPS2 was going to provide death benefits not substantially different to those in the BSPS.

So, the spouse's pension provided by the BSPS2 would have been useful to Mrs E if Mr E predeceased her and I don't think True Potential made the value of this benefit clear enough. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And there may not have been a large sum left anyway in a SIPP upon Mr E's passing, particularly if he lived a long life. As per the pension transfer report, if Mr E withdrew an income of equal value to the estimated benefits provided by the BSPS2, increasing by RPI per year, the fund at the medium rate of return would run out at 102. However, there were several flaws in this.

Firstly, as I've said above, I don't think Mr E was likely to achieve the middle rate of return, given his actual attitude to risk and the impact of charges, so in reality it could be depleted sooner, particularly if returns were poor. And by transferring out, Mr E was also giving up substantial guarantees and benefits associated with the DB scheme so this wasn't a 'like-for-like' comparison. In any event, True Potential should not have encouraged Mr E to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Furthermore, it doesn't appear that True Potential took into account the fact that Mr E could have nominated Mrs E as the beneficiary of any funds remaining in his DC scheme. So, to this end, Mr E had already ensured part of his pension wouldn't 'die with him'.

I can't see whether, or the extent to which, life insurance was discussed in this case. But at 42 years old, this may have been a reasonably affordable product if Mr E really did want to leave a legacy for Mrs E and the children.

Overall, in this case I don't think different death benefits available through a transfer to a SIPP justified the likely decrease of retirement benefits for Mr E. I think this objective, listed briefly as it was in the suitability letter, was no more than a generic comment and not meaningful to Mr E's situation.

Control or concerns over financial stability of the DB scheme

It's clear that Mr E, like many employees of his company, was concerned about his pension. His employer had recently made the announcement about its plans for the scheme and True Potential said he lacked trust in the company. He'd heard negative things about the PPF and True Potential said he could have more control over his pension fund.

So, it's quite possible that Mr E was also leaning towards the decision to transfer because of the concerns he had about his employer and a negative perception of the PPF. However, it was True Potential's obligation to give Mr E an objective picture and recommend what was in his best interests.

By the point of the advice being delivered details of BSPS2 were known and it seemed likely it was going ahead. So, I think this should have alleviated Mr E's concerns about the scheme moving to the PPF.

However, even if there was a chance the BSPS2 wouldn't go ahead, I think that True Potential should have reassured Mr E that the scheme moving to the PPF wasn't as concerning as he thought. The income available to Mr E through the PPF would have still provided a significant portion of the income he thought he needed at retirement, and he was still unlikely to be able to exceed this by transferring out, given his actual ATR. And although the increases in payment in the PPF were lower, the income was still guaranteed and was not subject to any investment risk. So, I don't think that these concerns should have led to True Potential's recommendation to Mr E to transfer out of the DB scheme altogether.

Other issues

I have noted the points made by True Potential concerning Mr E's likely financial needs in retirement. Of course, it's important to bear in mind that retirement was some way off and any assessment of his future retirement income needs could only be, at best, an 'educated guess' at that point in time.

However, if Mr E genuinely found he had too much income in retirement caused by a lack of flexibility in the payments from the DB scheme, that could have been addressed at the time. For example, he could have reinvested any excess income for the benefit of his children. So, I don't think Mr E should have been advised to irreversibly transfer out of the DB scheme, particularly when he had the option of joining the BSPS2, when it couldn't be known how much income he'd actually require in retirement.

True Potential also referred to a number of other pension complaint cases to broadly demonstrate its compliance with the rules and guidance in existence at the time. I've noted what it said, but I've focussed on the issues apparent in *this* case and Mr E's circumstances.

Summary

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a SIPP would have sounded like attractive features to Mr E. But True Potential wasn't there to just transact what Mr E might have thought he wanted. The adviser's role was to really understand what Mr E needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr E was suitable. He was giving up a guaranteed, risk-free and increasing income within the BSPS2 (or the PPF). By transferring to a personal pension, the evidence shows Mr E was likely to obtain lower retirement benefits. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. I think True Potential ought to have advised him against transferring out of his DB scheme for this reason, particularly as it meant he'd be worse off in retirement.

So, I don't think it was in Mr E's best interests for him to transfer his DB scheme to a SIPP when he had the opportunity of opting into the BSPS2.

I appreciate that the BSPS2 hadn't been fully confirmed when the advice was given, but I think it was clear to all parties that it was likely to be going ahead. Mr E still had over 22 years before he intended to retire. So, I don't think that it would have been in his interest to accept the reduction in benefits he would have faced by the scheme entering the PPF, as it wouldn't be offset by the more favourable reduction for very early retirement. By opting into the BSPS2, Mr E would have retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. Also, Mr E was married, and his wife's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement (if Mr E chose to do so). That he had children was another factor as they may have also been able to draw benefits from the scheme under certain circumstances. The annual indexation of his pension when in payment was also more advantageous under the BSPS2.

On this basis, I think True Potential should have advised Mr E to opt into the BSPS2.

I have considered, given the circumstances of the time, whether Mr E would have transferred to a personal pension in any event. I accept that True Potential disclosed some of the risks of transferring to Mr E, and provided him with a certain amount of information. But ultimately it advised Mr E to transfer out, and I think Mr E relied on that advice.

I'm not persuaded that Mr E would have insisted on transferring out of the DB scheme, against True Potential's advice. I say this because Mr E was an inexperienced investor and this pension accounted for almost all of his retirement provision at the time. So, if True Potential had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would have accepted that advice.

I'm also not persuaded that Mr E's concerns about the PPF were so great that he would have insisted on transferring his pension, knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. So if True Potential had explained Mr E was also unlikely to exceed the benefits available to him through the PPF if he transferred out, and that he could meet his income needs in retirement without risking his guaranteed pension, I think that would have carried significant weight.

In light of the above, I think True Potential should compensate Mr E for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

A fair and reasonable outcome would be for the business to put Mr E, as far as possible, into the position he would now be in but for True Potential's unsuitable advice. I consider Mr E would have most likely opted to join the BSPS2, rather than transfer to the SIPP if he'd been given suitable advice. So, True Potential should use the benefits offered by BSPS2 for comparison purposes.

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and has set out its proposals in a consultation document - CP22/15-calculating redress for non-compliant pension transfer advice**.** The consultation closed on 27 September 2022 with any changes expected to be implemented in early 2023.

In this consultation, the FCA has said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 whilst the consultation takes place. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with any new rules and guidance that may come into force after the consultation has concluded.

We've previously asked Mr E whether he preferred any redress to be calculated now, in line with current guidance, or wait for any new guidance/rules to be published.

Mr E has chosen not to wait for any new guidance to come into effect to settle his complaint. So I am satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr E.

True Potential must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

For clarity, Mr E has no plans at present to retire any earlier than age 65. So, compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out as at the date of my final decision and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr E's acceptance of the decision.

True Potential may wish to contact the Department for Work and Pensions (DWP) to obtain Mr E's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr E's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr E's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr E as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement - presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

The payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mr E within 90 days of the date True Potential receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes True Potential to pay Mr E.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above - and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

I have also considered the impact on Mr E of the unsuitable advice and transfer, in particular the stress and anxiety he said materially affected his physical health. It is understandable that he would feel such anxiety considering it was the majority of his retirement provision at stake. He has no other savings and an outstanding mortgage and I appreciate his concerns about how he will be able to provide for a reasonable retirement. For this I direct True Potential to additionally pay Mr E the sum of £250 for the stress and anxiety caused by this unsuitable transfer.

If the complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, I'd expect True Potential to carry out a calculation in line with the updated rules and/or guidance in any event.

Where I uphold a complaint, I can award fair compensation of up to £160,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I've decided to uphold this complaint and require True Potential True Potential Wealth Management LLP to pay Mr E the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I would additionally require True Potential Wealth Management LLP to pay Mr E any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require True Potential Wealth Management LLP to pay Mr E any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that True Potential Wealth Management LLP pays Mr E the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr E.

If Mr E accepts my final decision, the money award becomes binding on True Potential Wealth Management LLP.

My recommendation would not be binding. Further, it's unlikely that Mr E can accept my decision and go to court to ask for the balance. Mr E may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 9 December 2022.

Michael Campbell
Ombudsman